G.H. Bass Caribbean, Inc. ***and*** **Congreso de Uniones Industriales de Puerto Rico.** Cases 24–CA–6064 and 24–CA–6166

March 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On May 6, 1991, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief; the General Counsel filed limited exceptions, a supporting brief, and a brief in support of the judge's decision; and the Union filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order which, as modified, is set forth in full below.[3]

ORDER

The Respondent, G.H. Bass Caribbean, Inc., Manati, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally granting unit employees a wage increase and implementing dental benefits prior to the resolution of a question concerning the continuing representation of an incumbent union. The appropriate unit is:

> All production employees employed by Respondent at its plant located in Manati, Puerto Rico, excluding all other employees, including office clerical employees, professional, executive, maintenance employees, shipping and receiving warehouse employees, guards, janitors, assistant supervisors and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Manati, Puerto Rico facility copies of the attached notice, in Spanish and English, marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps have been taken to comply.

[1] Member Raudabaugh is recused from participating in this case.

[2] The Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Chairman Stephens and Member Oviatt, for institutional reasons, join Member Devaney in adopting the judge's findings that the Respondent violated Sec. 8(a)(5) and (1) of the Act, in recognition that current Board precedent (see *W. A. Krueger Co.*, 299 NLRB 914 (1990)), is dispositive in the absence of a majority vote to overrule that precedent.

[3] We modify the judge's recommended Order to provide that the notice be posted in both English and Spanish.

On February 12, 1992, the Board granted the Respondent's motion to sever Case 24–RD–359 and issued a Decision, Order, and Certification of Results of Election. In light of that decision, we grant the General Counsel's request that the Union's name be deleted from the Order. Thus, we shall modify the judge's recommended Order to provide that the Respondent refrain from making any unilateral changes prior to the final resolution of any question concerning the representative status of any incumbent union.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally grant unit employees a wage increase and implement dental benefits prior to the final resolution of a question concerning the continuing representation of any incumbent union. The appropriate unit is:

> All production employees employed by the Employer Respondent at its plant in Manati, Puerto Rico excluding all other employees, including office clerical employees, professional, executive, and maintenance employees, shipping and receiving, warehouse employees, guards, janitors, assistant supervisors and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

G.H. BASS CARIBBEAN, INC.

Virginia Milan, Esq., for the General Counsel.
Vincente J. Antonetti, Esq., of Santurce, Puerto Rico, and *Michael J. Shershin, Esq.*, of Atlanta, Georgia, for the Respondent.
Nicolas Delgado Esq., of Puerto Nuevo, Puerto Rico, for the Union.
Juan Vicens, of Manati, Puerto Rico, for the Petitioner.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On September 8, 1989, the Congreso de Uniones Industriales de Puerto Rico (Union or Charging Party) filed objections to a decertification election (24–RD–359) which had been held on August 31, 1989. A report on a report and recommendation on objections was issued on January 26, 1990, overruling all but Objections 1 and 5.[1]

The charge in 24–CA–6064 was filed on December 19, 1989, and later amended on February 2, 1990. Complaint thereon issued on February 2, 1990, alleging that G.H. Bass Caribbean, Inc. (Employer or Respondent) failed to bargain in good faith by unilaterally granting wage increases and by adding dental benefits to the employees' health plan. The complaint in Case 24–CA–6064 and the objections in Case 24–RD–359 were consolidated for hearing by order dated February 8, 1990.

The charge in 24–CA–6166 was filed by the Union on May 21, 1990, and amended on June 6, 1990. The complaint in Case 24–CA–6064 was amended at the hearing essentially to add the allegations of the amended charge in Case 24–CA–6166, i.e., the prehearing interrogation of employees in an unlawful manner. Answers were timely filed by Respondent. A hearing was held before the administrative law judge on June 11, 12 and 13, 1990. Briefs have been timely filed by General Counsel, Respondent, and the Union, which have been duly considered.[2]

FINDINGS OF FACT[3]

I. EMPLOYER'S BUSINESS

Employer is a Delaware corporation authorized to do business in Puerto Rico, where it is engaged in the manufacture of shoes, operating a facility located in Manati, Puerto Rico. Respondent annually purchases and receives goods and materials valued in excess of $50,000 directly from suppliers located outside Puerto Rico. The complaint alleges, the Respondent admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Employer takes the position that the Union is not entitled to the status of labor organization under the Act since it has failed to file certain financial disclosure forms required by the Department of Labor and because the Union was charged by then-Secretary of Labor Elizabeth Dole in a complaint filed in Federal District Court in Puerto Rico alleging misconduct by certain officers of the Union in the administration of the Union's employee welfare benefits plan under the Employee Retirement Income Security Act of 1974 (ERISA).

Nonetheless, the record makes it abundantly clear that the Union meets the Board's statutory criteria for a labor organization status set out in Section 2(5); that criteria being:

> The term ''labor organization'' means any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The fact that the Union may be remiss in filing reports required by the Department of Labor, or is the subject of allegations now pending in Federal district court, do not disqualify it as a labor organization when the Act's criteria are met. *Comet Rice Mills*, 195 NLRB 671 (1972). Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] The objections were initially dismissed by the Regional Director as untimely, but later reinstated based on a claim by the Union that an agent of the Regional Office had misinformed the Union concerning the filing date for objections. The Regional Director ordered a hearing on Objections 1 and 5. The Regional Director's decision and order was appealed to the Board by the Employer. The Board upheld the Regional Director in a 2 to 1 decision. A motion for reconsideration of the Board's decision was denied by Board Order dated September 19, 1990.

[2] No opposition thereto having been filed, General Counsel's informative motion dated October 24, 1990, is hereby granted. Also, no opposition thereto having been filed, General Counsel's motion to correct brief dated August 2, 1990, is also granted.

[3] There is conflicting testimony regarding some allegations of the Complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses. In addition, I have considered the inherent probabilities; the probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of witnesses, I rely specifically on their demeanor and have made my findings accordingly. While apart from consideration of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

III. THE ALLEGED UNFAIR LABOR PRACTICES

Facts

A. *Background*

The Union has represented the employees of the Respondent under a series of collective-bargaining agreements since April 9, 1976. The most recent collective-bargaining agreement between the parties became effective November 1, 1985, and expired on October 31, 1988.

A petition for decertification of the Union as the collective-bargaining representative of the unit employees was filed on August 15, 1988. An election was conducted on November 17, 1988. That election was lost by the Union by a vote of 267 to 169. Objections to that election were filed by the Union. Prior to any hearing on objections, agreement was reached on setting aside the first election and conducting a second election. A second decertification election was held on August 31, 1989.[4] This election was lost by the Union by a vote of 292 to 154. Objections to the August 31 election were filed on September 8. After an investigation, the Regional Director issued a report on objections, concluding that six of the eight objections which had been filed should be overruled, and that the remaining two objections, 1 and 5, should be consolidated for hearing with the pending unfair labor practice allegations.

B. *Unilateral Grant of Wage Increases and Dental Benefits*

With respect to these unfair labor practice allegations, Luis Benitez, vice president and general manager of Respondent, testified that after the first election on November 17, 1988, the parties met and negotiated at various times but that the Union had made no bargaining request of the Respondent since July 1989. Thereafter, Respondent, on December 7, announced, without notice to or consultation with the Union, a unilateral across-the-board increase of 20 cents per hour retroactive to November 1 and the implementation of a dental plan to be added to the employees' health care plan to become effective January 1, 1990. It is undisputed that these benefits were conferred unilaterally at a time when objections to the election of August 31, 1989, were still pending and unresolved and after the most recent collective-bargaining agreement had expired.

In justification for granting these benefits, Benitez testified that Respondent entertained a good-faith doubt of the Union's majority status. Apparently, the basis for these doubts derived from what Respondent viewed as employee dissatisfaction with the Union over the Union's health insurance program. Benitez testified that the union plan was not being accepted by health care facilities because of the plan's financial problems. Benitez testified that some 300 unit employees signed a petition seeking to change health care coverage to the Respondent's plan, but that Benitez had to advise them that the collective-bargaining relationship did not allow for such a change.

Respondent takes the position that it had a good-faith doubt based on objective considerations that the Union no longer represented a majority of its unit employees when it unilaterally implemented a wage increase and a dental plan on November 7. I do not agree. While it appears that employee dissatisfaction with the union health plan was substantial, I cannot conclude that such dissatisfaction was tantamount to a rejection of union representation so as to provide sufficient basis for a good-faith doubt of the Union's majority status. As Respondent correctly points out, the filing of a decertification petition alone is not sufficient to support a good-faith doubt, but Respondent argues that in the instant case, where the filing of the decertification petition is augmented by additional considerations of employee dissatisfaction, and two decertification elections lost by decisive and increasing margins, the Board's good-faith doubt criteria has been met. This is a minority view apparently shared by Member Oviatt whose dissent in *W. A. Krueger Co.*, 299 NLRB 914 (1990), includes the following language:

> For the following reasons, I would not follow *Presbyterian Hospital* [241 NLRB 996 (1979)]. I would permit an employer to rely on, and its employees to enjoy, the results of a Board-conducted decertification election that the Union has lost and to which it has objected. In my opinion, the election tally is an objective basis for withdrawing recognition from the Union.

However, the Board majority view remains that an employer cannot cite the election tally as dispositive of its postelection bargaining obligation, where the election results are being contested and the results pending and inconclusive. Thus, in *Krueger*, supra at fn. 11, the Board panel majority held:

> Contrary to our dissenting colleague's view that an election tally is dispositive of the employer's postelection obligation to bargain, an ostensible union victory in an initial certification election does not activate an employer's duty to bargain with a union. An 8(a)(5) violation resulting from an employer's postelection unilateral changes, once the union is certified, is actually an exception to the rule that election results are final on certification, an exception used solely to safeguard a union's future bargaining position.

In my opinion, the considerations recited by the Respondent in the instant case, individually, or even in their totality, are insufficient under current Board law, to support the conclusion, based on objective considerations, that Respondent had a good-faith doubt that a majority of its employees no longer wanted union representation.

Respondent also argues that the Board's findings in *Mike O'Connor*[5] should be extended to apply to decertification proceedings. In *Mike O'Connor*, the Board enunciated the rule that an employer who makes unilateral changes in terms and conditions of employment after a representation election and while objections are pending, does so at its peril and that if the Union is certified, the employer will have violated the Act and if a certification of results issues, the unilateral changes will be viewed as lawful.

The issue in the instant case is whether to apply the same rule to decertification proceedings. In the instant case, this would mean that if the objections to the election were sus-

[4] All dates refer to 1989 unless otherwise indicated.

[5] *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975).

tained, the Employer will have violated Section 8(a)(5) of the Act by unilaterally implementing the wage increases and dental benefits, but if the objections are overruled, there will have been no 8(a)(5) violation.

However, the issue raised by the instant case has been resolved at least at the Board level. The Board has decided not to extend the *Mike O'Connor* rule to decertification proceedings.[6] In doing so, the Board concedes its differences with the Fifth Circuit[7] and with its colleague's dissenting opinion in *Krueger*. A Board majority makes its position clear when it states, in *Krueger*:

> For the reasons stated below, we decline to extend the *Mike O'Connor* ''at risk'' rule to decertification situations. Accordingly, we adhere to Presbyterian Hospital and find that in the decertification context the change in the basic relationship between the parties and in the parties' obligations to bargain should not be effective until the date the certification issues. This view is consistent with the status quo approach of *Mike O'Connor*. Thus, any unilateral changes made before the issuance of the certification of results violate Section 8(a)(5) and (1) of the Act.

The Board continues with an exposition and analysis of past and present Board law, including the basic observation that the presumption of majority status enjoyed by an incumbent collective-bargaining representative adheres until election results are final.

Accordingly, in the instant case, since the unilateral changes herein were made after the contract had expired, and while objections to the decertification election were still pending, and while the Union continued to enjoy majority status, those unilateral changes violate Section 8(a)(5) of the Act.

C. *Unlawful Prehearing Interrogation*

It appears that after the Regional Director issued the report on objections recommending hearing on two of the eight objections, Respondent's attorney conducted an investigation into the facts concerning those two objections in preparation for hearing thereon. General Counsel contends that Respondent's attorney, in conducting interviews with employees, engaged in unlawful interrogation concerning matters related to a Board proceeding, i.e., the objections case.

The General Counsel presented three employees. Teresa Santos testified that she was a union delegate and negotiator who had participated in negotiations with the Respondent's attorneys in recent contract negotiations. Santos testified that at her interview, Respondent's attorney said nothing about investigating the objections case, never told her that her participation was voluntary and never gave her any assurances against reprisals. Luiz Perez also testified that he was a member of the union negotiating committee who knew Respondent's attorney from prior negotiations. Perez testified that he was never told that his participation was voluntary or that no reprisals would take place. Rozario Maysonet was another union delegate and negotiator who had acted as the union observer at the election on August 31. Maysonet testified that when he went into the interview, Respondent's attorney identified himself and that Maysonet already knew him from prior contract negotiations. Maysonet testified that he was not told that the interview was voluntary or that he could leave and that he was told that he was obliged to answer the questions. However, in a prior affidavit, Maysonet had stated, ''Before Attorney Antonetti asked me the questions, he informed me that I could leave, but that he was going to ask me two or three questions and I told him that I had no problems.''

Antonetti testified that he has been an attorney since 1960 engaged exclusively in the areas of labor and employment law; that he is familiar with the criteria established by the Board in *Johnnie's Poultry*[8] for the interrogation of employees in preparation for litigation; and that he was careful to observe those criteria during each of the 31 employee interviews he conducted during May and June 1990. Specifically, Antonetti testified that as each employee came into the conference room, that employee was introduced to him by a company official whereupon Antonetti would tell the employee that he was there to interview him or her in connection with litigation concerning the objections; that he was representing management; that he would like their voluntary participation, adding that participation in the interrogation was completely voluntary and that there would be rewards and no reprisals for not participating. All agreed to be interviewed. Antonetti then told them that he was interested only in learning the facts about two incidents, the first concerning the distribution of antiunion literature by two employees, and the second, the promise of a day off with pay and a party if the Union lost the election. All responded to both questions except Perez who, after answering the first question, objected to the presence of a pilot light on a television set in the conference room and, despite Antonetti's assurances that the conversation was not being taped, answered that he did not want to continue. Antonetti told him that he could leave and asked him to acknowledge that before the interview started he had been advised that there would be no reprisals and Perez, said that he understood. Antonetti testified that he had selected Santos, Perez, and Maysonet to be among those interviewed because they had participated in prior negotiations for the Union.

In addition to Antonetti, Respondent called employees Victor Marrero and Naftali Kuilan, both of whom testified that they were advised prior to their interviews that their participation in the interview process was voluntary and that there would be no reprisals. In addition, the parties entered into a stipulation reciting, in essence, that seven additional witnesses were available who, if called to testify, would testify that they were told that the only purpose of the interview was to ascertain the true facts concerning allegations of distribution of literature and the matter of being promised a day off with pay and a party; that there would be no rewards or reprisals for participation in the interviews; and that their participation was completely voluntary. Having reviewed all of the relevant testimony, I am persuaded that Antonetti did observe the criteria set out in *Johnnie's Poultry* regarding the interrogation of employees pursuant to litigation. This finding is based on credibility considerations which I have resolved

[6] *W. A. Krueger Co.*, supra. See also *Presbyterian Hospital*, supra.

[7] *Dow Chemical Co.*, 250 NLRB 756 (1980), enf. denied 660 F.2d 687 (5th Cir. 1981).

[8] *Johnnie's Poultry Co.*, 146 NLRB 770 (1964).

in favor of Respondent. First, Antonetti was aware of the criteria and testified, credibly in my opinion, that he observed the criteria in every case. It would have been strange for him to have recited those safeguards to all of those interviewed except the three active union supporters, one of whom was an observer at the election. I also note that no witnesses except union delegates or negotiators were called to support these allegations, and that the parties stipulated that Respondent had available seven named witnesses who would testify that the safeguards were recited to them. I also note as to Maysonet, the unexplained variance between his testimony that he was told that he was obliged to answer and not told that he could leave, while his affidavit states that he was told that he could leave.[9]

Accordingly, I conclude that Respondent did not violate the Act by unlawfully interrogating employees.

IV. OBJECTIONS TO ELECTION

Objection 1 reads:

> Two company employees in charge of its campaign, Juan Vicens and Enrique Maldonado, during working hours and inside the employe premises distributed propaganda smearing the Union on the following dates, August 28, 29, 30 and 31, 1989. During such days, even though they were campaigning, they received their full salary.

In support of its objection, the Union called three witnesses, Santos, Perez, and Maysonet. Santos testified that employees Juan Vicens and Enrique Maldonado passed out antiunion leaflets to her shortly after 7 a.m. on 4 successive days, August 28, 29, 30, and 31 (the day of the election), all in 1989. According to Santos, these distributions occurred after she had passed through the gate onto company property and even in the patio and within the department. Maysonet testified that Vicens and Maldonado distributed antiunion pamphlets on these days inside the gate and also at the work stations of employees during worktime. Maysonet testified that Vicens gave pamphlets to him and others in his department, naming Perez and Rafael Colon. According to Maysonet, Maldonado distributed pamphlets in another department. Maysonet also testified that he complained to his supervisor, Carlos Vega, about the distribution, but that Vega did nothing. The Union called Perez to testify about the distribution. However, Perez testified only that Vicens and Maldonado distributed pamphlets but did not testify that any pamphlets were distributed during worktime nor did he support Maysonet's testimony that Vicens gave him (Perez) a pamphlet while he was working. Colon was not called as a witness.

On the other hand, Vicens testified that while he did distribute antiunion pamphlets, he did not do so during worktime or in any work area but limited his distribution to employees in areas outside the gate and off company property. This testimony is supported by Marrero and Colon who testified that they never saw Vicens or Maldonado distributing during work hours. Vega, who supervises Maysonet and Perez, testified that he never saw Vicens or Maldonado distributing pamphlets to Maysonet, Perez or anyone else in the work area. In addition, the parties stipulated that Maldonado, if called, would testify like Vicens that he distributed pamphlets on the 4 days in issue to employees as they came to work between the hours of 6 and 7:15 a.m. and that he never distributed leaflets to anyone inside the plant during worktime, specifically not to Santos, Maysonet, or Perez.

The parties also stipulated that 10 additional employees, named in the stipulation, would testify, if called, that on the dates in question, August 28, 219, 30, and 31, 1989, they observed Vicens and Maldonado distributing literature at the plant gate between 6:30 and 7 a.m. to employees coming to work and that they did not see Vicens or Maldonado distributing literature or otherwise campaigning inside either of the 2 plant buildings during worktime.

Having reviewed the entire record in light of the credibility considerations noted above, I am persuaded that the weight of the credible evidence favors those accounts recited by the Employer's witnesses. Accordingly, I conclude that the evidence is insufficient to warrant the conclusion that Objection 1 is meritorious and I shall recommend that it be overruled.

Turning now to Objection 5, that objection reads:

> During the campaign the employer and its agents offered the employees a pay day for celebration and a party if they voted against the Union.

To support its position, the Union called Perez who testified that in a meeting of employees on or about August 29 or 30, Luis Benitez, vice president and general manager of the Employer, said that if the Company won the election, they could have the day off with pay and that he heard nothing else because he left the meeting after some 5 or 10 minutes. Perez was the only witness to so testify although the meeting was attended by the entire work force numbering hundreds of employees. Perez, in his affidavit, did not make the same contention, saying in the affidavit only that Vega had told him that if the Company won the election, they would give Friday, September 1, the day after the election, as a day off with pay.[10] Perez' testimony is not corroborated. Indeed, union witness Santos testified that she was never told by any supervisor that if the Company won the election, they would have a day off with pay.[11]

Marrero testified, as did Kuilan, that Benitez held a meeting of employees on August 30 at about 9:30 a.m. but that he did not say anything about a day off with pay if the Company won the election. Vega denied telling Perez, either be-

[9] Having concluded, based on the credibility resolutions, that Respondent did not violate Sec. 8(a)(1) of the Act in the interrogation of employees, I find it unnecessary to pass on Respondent's alternate position that even if the interrogations had been unlawful, the *Johnnie's Poultry* criteria does not apply to an attorney preparing for a hearing.

[10] Perez attributes his failure to mention in the affidavit his testimony that Benitez promised a day off with pay by saying that that was what he remembered at the time.

[11] It appears that a spontaneous celebration occurred on September 1 among the supporters of the Employer and that Benitez did come out about 9:15 a.m. to tell the employees that in celebration they could have the rest of the day off with pay and that he was ordering refreshments and free drinks for those who wanted to remain and that the others were free to go home. Since this occurred after the election, it could not have been a factor influencing the results of the election and therefore cannot be viewed as a basis for setting the election aside.

fore or after the election on September 1, that they were getting the day after the election off with pay as Benitez had promised. The parties stipulated that Benitez, if called, would testify that he never told any manager, supervisor, or employee at any time prior to the election that they would get a day with pay if the Union won the election. Specifically, that at a 15-minute meeting of employees held on August 30, the day before the election, Benitez did not say that he would give the employees the day off with pay if the Company won the election. Further, that he is the only one with the authority to grant such a day off. In addition, the parties stipulated that 10 more employees, named in the stipulation, would testify, if called, that Benitez did not, at the meeting of employees on August 30, make any promise of a day off with pay or a party if the Employer won the election. In these circumstances, the weight of the credible evidence persuades me that the contention set out in Objection 5 has not been supported and this objection must be overruled.

In summary, I conclude that neither Objection 1 nor 5 is meritorious. Accordingly, they should be overruled, and the results of the election certified.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent, set forth in section III above, occurring in connection with Respondent Employer's operations, described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Union contends that under the authority of the *Gissel* case,[12] the unfair labor practices alleged herein are so serious and pervasive as to warrant the imposition of a bargaining order on the Employer, notwithstanding the absence of majority representation by the Union. I do not agree. The remedy directed herein is sufficient under the Act for the violations found.

The unlawful unilateral changes in working conditions found here consist of the granting of a wage increase and implementation of a dental plan and while these actions were unlawful, nothing in the remedy shall be interpreted as requiring Respondent to reduce any wage increase or benefit already granted.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times relevant, Congreso de Uniones Industriales de Puerto Rico was the exclusive representative of all the employees in the appropriate unit set forth below for purposes of collective-bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act. The unit is:

> All production employees employed by Respondent at its plant located in Manati, Puerto Rico excluding all other employees, including office clerical employees, professional, executive, maintenance employees, shipping and receiving warehouse employees, guards, janitors, assistant supervisors and supervisors as defined in the Act.

4. By unilaterally changing the terms and conditions of employment of unit employees by granting wage increases and by implementing a dental plan, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[Recommended Order omitted from publication.]

[12] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).